

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2880**

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**Introduced by Committee on Judiciary (Assembly Members Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, Holden, and Ting)**

February 25, 2016

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An act to amend Section 14615.1 ~~of, and to add Section 6253.11 to,~~ of the Government Code, and to amend Section 10335 of the Public Contract Code, relating to state intellectual property.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2880, as amended, Committee on Judiciary. State intellectual property.

~~(1) The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions.~~

~~This bill would require a public agency to comply with a request to inspect or copy a public record that is protected by the federal Copyright Revision Act of 1976 unless the record is otherwise exempt from disclosure.~~

~~(2)~~

~~(1) Under existing law, contracts by state agencies for services rendered to the state are, with certain exceptions, of no effect unless~~

and until approved by the Department of General Services. Existing law imposes various requirements with respect to contracts for services rendered to the state. Existing law requires the department to develop factors for state agencies to consider in deciding whether to sell or license their intellectual property.

This bill would, for contracts entered into on or after January 1, 2017, require a state agency entering into a contract for services to consider the intellectual property rights of both the state and the contracting party unless the agency, prior to execution of the contract, obtains the consent of the department.

(3)

(2) Existing law exempts from the Administrative Procedure Act certain actions to maintain, develop, or prescribe processes, procedures, or policies by the Department of General Services that are required or authorized by the Legislature with respect to the general operations of the department or the awarding of state contracts.

This bill would additionally exempt those actions taken with respect to the department's above-described duties relating to the management and development of state intellectual property, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 6253.11 is added to the Government~~  
2     ~~Code, to read:~~  
3     ~~6253.11. A public agency shall comply with a request to inspect~~  
4     ~~or copy a public record that is protected by the Copyright Revision~~  
5     ~~Act of 1976 (17 U.S.C. Sec. 101 et seq.) to the extent permitted~~  
6     ~~by this chapter, unless that public record is otherwise exempt from~~  
7     ~~disclosure under any other law, including, but not limited to,~~  
8     ~~Sections 6254 and 6255.~~  
9     ~~SEC. 2.~~  
10    ~~SECTION 1.~~ Section 14615.1 of the Government Code is  
11    amended to read:  
12    14615.1. (a) Where the Legislature directs or authorizes the  
13    department to maintain, develop, or prescribe processes,  
14    procedures, or policies in connection with the administration of  
15    its duties under this chapter and Chapter 2 (commencing with  
16    Section 14650) of this part, Chapter 2 (commencing with Section

1 13988) of Part 4.5, or Section 6611 of the Public Contract Code  
2 or Part 2 (commencing with Section 10100) of Division 2 of the  
3 Public Contract Code, the action by the department shall be exempt  
4 from the Administrative Procedure Act (Chapter 3.5 (commencing  
5 with Section 11340), Chapter 4 (commencing with Section 11370),  
6 Chapter 4.5 (commencing with Section 11400), and Chapter 5  
7 (commencing with Section 11500)). This section shall apply to  
8 actions taken by the department with respect to the State  
9 Administrative Manual and the State Contracting Manual.

10 (b) To the extent permitted by the United States and California  
11 Constitutions, subdivision (a) also applies to actions taken by the  
12 department prior to January 1, 1999, with respect to competitive  
13 procurement in the State Administrative Manual and the State  
14 Contracting Manual.

15 ~~SEC. 3.~~

16 *SEC. 2.* Section 10335 of the Public Contract Code is amended  
17 to read:

18 10335. (a) This article shall apply to all contracts, including  
19 amendments, entered into by any state agency for services to be  
20 rendered to the state, whether or not the services involve the  
21 furnishing or use of equipment, materials, or supplies or are  
22 performed by an independent contractor. Except as provided in  
23 Sections 10295.6 and 10351, and paragraphs (8) and (9) of  
24 subdivision (b) of Section 10340, all contracts subject to this article  
25 are of no effect unless and until approved by the department. Each  
26 contract shall be transmitted with all papers, estimates, and  
27 recommendations concerning it to the department and, if approved  
28 by the department, shall be effective from the date of approval.  
29 This article shall apply to any state agency that by general or  
30 specific statute is expressly or impliedly authorized to enter into  
31 the transactions referred to in this section. This article shall not  
32 apply to contracts for the construction, alteration, improvement,  
33 repair, or maintenance of real or personal property, contracts for  
34 services subject to Chapter 10 (commencing with Section 4525)  
35 of Division 5 of Title 1 of the Government Code, to contracts that  
36 are listed as exceptions in Section 10295, contracts of less than  
37 five thousand dollars (\$5,000) in amount, contracts of less than  
38 five thousand dollars (\$5,000) where only per diem or travel  
39 expenses, or a combination thereof, are to be paid, contracts

1 between state agencies, or contracts between a state agency and  
2 local agency or federal agency.

3 (b) In exercising its authority under this article with respect to  
4 contracts for the services of legal counsel, other than the Attorney  
5 General, entered into by any state agency that is subject to Section  
6 11042 or Section 11043 of the Government Code, the department,  
7 as a condition of approval of the contract, shall require the state  
8 agency to demonstrate that the consent of the Attorney General to  
9 the employment of the other counsel has been granted pursuant to  
10 Section 11040 of the Government Code. This consent shall not be  
11 construed in a manner that would authorize the Attorney General  
12 to establish a separate program for reviewing and approving  
13 contracts in the place of, or in addition to, the program administered  
14 by the department pursuant to this article.

15 (c) Until January 1, 2001, the department shall maintain a list  
16 of contracts approved pursuant to subdivision (b). This list shall  
17 be filed quarterly with the Senate Committee on Budget and Fiscal  
18 Review and the Assembly Committee on Budget. The list shall be  
19 limited to contracts with a consideration in excess of twenty  
20 thousand dollars (\$20,000) during the life of the contract and shall  
21 include sufficient information to identify the provider of legal  
22 services, the length of each contract, applicable hourly rates, and  
23 the need for the services. The department shall add a contract that  
24 meets these conditions to the list within 10 days after approval. A  
25 copy of the list shall be made available to any requester. The  
26 department may charge a fee to cover the cost of supplying the list  
27 as provided in Section 6253 of the Government Code.

28 (d) (1) In exercising its authority under this article, a state  
29 agency shall consider the processes, procedures, or policies  
30 developed by the department pursuant to Chapter 2 (commencing  
31 with Section 13988) of Part 4.5 of Division 3 of Title 2 of the  
32 Government Code.

33 (2) For contracts under this article entered into on or after  
34 January 1, 2017, a state agency shall consider the intellectual  
35 property rights of both the state and the contracting party unless  
36 the state agency, prior to execution of the contract, obtains the  
37 consent of the department.

38 (e) Contracts subject to the approval of the department shall  
39 also have the department's approval for a modification or  
40 amendment thereto, with the following exceptions:

1 (1) An amendment to a contract that only extends the original  
2 time for completion of performance for a period of one year or  
3 less is exempt. If the original contract was subject to approval by  
4 the department, one fully executed copy including transmittal  
5 document, explaining the reason for the extension, shall be sent  
6 to the legal office of the department. A contract may only be  
7 amended once under this exemption.

8 (2) Contracts let or awarded on the basis of a law requiring  
9 competitive bidding may be modified or amended only if the  
10 contract so provides or if authorized by the law requiring  
11 competitive bidding.

12 (3) If an amendment to a contract has the effect of giving the  
13 contract as amended an increase in monetary amount, or an  
14 agreement by the state to indemnify or save harmless any person,  
15 the amendment shall be approved by the department.